

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Henry Oliver	Team: Squad #13	CCRB Case #: 201807404	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 08/17/2018 6:20 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 2/17/2020	EO SOL 2/17/2020	
Date/Time CV Reported Wed, 08/29/2018 2:42 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/06/2018 1:02 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Francis Conejo	01910	954664	NARCBMN
2. An officer			
3. SDS Franklin Bohr	02618	892920	D-E T/F
4. POM Luis Candelaria	10516	953720	046 PCT
5. SGT Sandy Espinal	02323	948939	046 PCT
6. POM Nicholas Kourounis	28949	954029	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Diego Marin	03763	954097	046 PCT
2. POM Joshua Healy	24570	954923	046 PCT
3. POM Martin Kuhl	05004	956812	046 PCT
4. CPT Emilio Melendez	00000	898059	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Luis Candelaria	Force: Police Officer Luis Candelaria used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
B.SGT Sandy Espinal	Abuse: Sergeant Sandy Espinal frisked § 87(2)(b) [REDACTED]	[REDACTED]
C.SGT Sandy Espinal	Abuse: Sergeant Sandy Espinal searched § 87(2)(b) [REDACTED]	[REDACTED]
D. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
E.SGT Sandy Espinal	Force: Sergeant Sandy Espinal hit § 87(2)(b) [REDACTED] against a wall.	[REDACTED]
F.POM Nicholas Kourounis	Abuse: Police Officer Nicholas Kourounis strip-searched § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Francis Conejo	Abuse: Police Officer Francis Conejo entered § 87(2)(b) [REDACTED] Apt. W4M in the Bronx.	[REDACTED]
H.POM Francis Conejo	Abuse: Police Officer Francis Conejo searched § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
I.SDS Franklin Bohr	Abuse: Sergeant Franklin Bohr threatened § 87(2)(b) [REDACTED] with the arrest of § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
J.POM Francis Conejo	Abuse: Police Officer Francis Conejo strip-searched § 87(2)(b)	

Case Summary

On August 18, 2018, § 87(2)(b) called 311 and filed this complaint, which IAB received that same day. On August 28, 2018, the CCRB received § 87(2)(b)'s complaint via IAB log #18-33209. On August 29, 2018, § 87(2)(b)'s son, called IAB and filed a duplicate complaint regarding the incident. On September 6, 2018, the CCRB received the complaint via IAB log #18-34478.

On August 17, 2018, at approximately 6:20 p.m., § 87(2)(b) entered the lobby of his apartment building at § 87(2)(b) in the Bronx. There, he encountered Police Officer Luis Candelaria, Police Officer Nicholas Kourounis, Police Officer Francis Conejo, and Sergeant Sandy Espinal, all of the 46th Precinct, who were at the location to conduct reconnaissance of the building before executing a search warrant for § 87(2)(b)'s apartment at a not yet determined later time.

PO Candelaria allegedly placed § 87(2)(b) in a chokehold (**Allegation A: Force;** § 87(2)(g) § 87(2)(b) was allegedly frisked (**Allegation B: Abuse of Authority;** § 87(2)(g) and searched (**Allegation C: Abuse of Authority;** § 87(2)(g) an unknown officer allegedly told § 87(2)(b) to “shut the fuck up,” (**Allegation D: Discourtesy;** § 87(2)(g) Sgt. Espinal pushed § 87(2)(b) against a wall (**Allegation E: Force;** § 87(2)(g) and PO Kourounis allegedly searched § 87(2)(b) inside of his underwear (**Allegation F: Abuse of Authority;** § 87(2)(g) § 87(2)(b).

PO Conejo and a team of 46th Precinct officers decided to execute the search warrant for § 87(2)(b)'s apartment (**Allegations G and H: Abuse of Authority;** § 87(2)(g) § 87(2)(b) was brought into his apartment, where he encountered Sergeant Franklin Bohr of the Criminal Intelligence Section, and Captain Emilio Melendez of the 46th Precinct. Sgt. Bohr allegedly told § 87(2)(b) that if he did not tell him where contraband was located inside of the apartment, Sgt. Bohr would arrest § 87(2)(b) (**Allegation I: Abuse of Authority;** § 87(2)(g) PO Conejo also allegedly searched § 87(2)(b) inside of his underwear (**Allegation J: Abuse of Authority;** § 87(2)(g) § 87(2)(b).

§ 87(2)(b) was arrested for criminal possession of a controlled substance in the third degree. According to the Office of Court Administration (“OCA”), § 87(2)(b)'s charges were dismissed (BR 01).

Surveillance footage from the lobby of § 87(2)(b) was obtained, however due to a recording malfunction, portions of the incident are not captured. Cell phone footage recorded by a witness, § 87(2)(b) was obtained from Instagram. The videos are located in IAs 39 and 59 (BR 02 and BR 03), and the summaries are located in IAs 52 and 65, respectively (BR 04 and BR 05).

Findings and Recommendations

Allegation (A) Force: Police Officer Luis Candelaria used a chokehold against § 87(2)(b)

The surveillance footage depicts § 87(2)(b) riding his bike into the lobby of his building, and at 00:11, PO Candelaria grabs § 87(2)(b)'s right arm and the back of his shirt. As the bike comes to a stop, PO Candelaria's grabs § 87(2)(b)'s shoulder with his left hand before, due to a technical glitch, the footage freezes. The footage jumps to PO Candelaria still holding onto § 87(2)(b) but due to the picture quality and the camera's angle, it is unclear where PO Candelaria is making contact with § 87(2)(b)'s body.

§ 87(2)(b) stated that upon riding his bike into the lobby of his apartment building, he was immediately grabbed by PO Candelaria, identified via investigation (BR 06). PO Candelaria did not say anything to § 87(2)(b) before making physical contact with him. From behind, PO Candelaria placed his left arm around § 87(2)(b)'s neck and his right arm underneath § 87(2)(b)'s right shoulder. PO Candelaria told § 87(2)(b) to dismount his bicycle, and held § 87(2)(b) in this position for approximately two minutes. § 87(2)(b)'s breathing was not restricted.

PO Candelaria said that upon § 87(2)(b)'s entry into the lobby on his bicycle, he grabbed § 87(2)(b) by his right arm and ordered him to dismount his bicycle to detain § 87(2)(b) because officers were there to execute a search warrant inside of § 87(2)(b)'s apartment (BR 07). PO Candelaria held § 87(2)(b) against a wall in the lobby to gain better control of him while he radioed for additional units to the lobby. § 87(2)(b) tensed his body and moved his left arm towards his waistband. PO Candelaria grabbed § 87(2)(b)'s left arm with his left arm. PO Candelaria denied placing his arm around § 87(2)(b)'s neck at any point during the incident.

No other officer interviewed was present for this portion of the incident.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Sandy Espinal frisked § 87(2)(b)

At 00:53 in the surveillance footage, PO Candelaria holds onto § 87(2)(b) underneath his arms. § 87(2)(b) is against the wall as PO Conejo, Sgt. Espinal, and PO Kourounis arrive from a nearby stairwell. PO Conejo grabs § 87(2)(b) on his right side and Sgt. Espinal grabs § 87(2)(b) on his left side. The camera's view of § 87(2)(b) is obstructed by the officers' bodies, and it is unclear where each officer is making contact with § 87(2)(b) and what actions each officer is taking. PO Kourounis stands behind PO Candelaria, who moves away from § 87(2)(b) as PO Kourounis places § 87(2)(b) in handcuffs. Though the footage does not clearly depict any officer frisking § 87(2)(b) the footage freezes again at 1:23, and does not capture this portion of the incident in its entirety.

The cell phone video depicts PO Kourounis, PO Conejo, and Sgt. Espinal making physical contact with § 87(2)(b) but PO Candelaria's and Sgt. Espinal's bodies obstruct the camera's view of § 87(2)(b) and it is unclear where each officer makes contact with him and what actions they each take, including whether § 87(2)(b) is frisked. The cell phone video does not capture this portion of the incident in its entirety.

§ 87(2)(b) said that after PO Candelaria apprehended him, he was held facing the wall as PO Candelaria radioed for back up. Officers, identified via investigation as PO Kourounis, Sgt. Espinal, and PO Conejo, arrived to the lobby. PO Conejo and Sgt. Espinal assisted PO Candelaria in holding § 87(2)(b) against the wall, and PO Kourounis placed him in handcuffs. Multiple officers, including PO Conejo, patted § 87(2)(b) down on his torso and legs, and searched him

simultaneously. § 87(2)(b) could not describe what action each individual officer took. § 87(2)(b) did not move his body at all and did not resist. (The alleged search is analyzed below in Allegation C. Allegation B is pled to Sgt. Espinal, the sole supervisor on scene.)

Sgt. Espinal said that prior to this incident, a § 87(2)(e), § 87(2)(f) told officers that § 87(2)(b) had a firearm and narcotics inside of his apartment and a search warrant for § 87(2)(b)'s apartment was obtained using this information. Sgt. Espinal did not recall when the information was provided § 87(2)(e), § 87(2)(f). Sgt. Espinal placed § 87(2)(b)'s left arm behind his back to handcuff him. § 87(2)(b) was not considered to be under arrest at that time, and Sgt. Espinal did not make any observations beyond § 87(2)(b)'s general noncompliance with officers' instructions to be still that lead him to believe § 87(2)(b) had said firearm on his person. § 87(2)(b) was frisked for weapons based on the information provided § 87(2)(e), § 87(2)(f) but Sgt. Espinal could not recall by which officer.

PO Conejo could not recall if § 87(2)(e), § 87(2)(f) specified whether the firearm was on § 87(2)(b)'s person or inside of § 87(2)(b)'s apartment, nor could he recall when § 87(2)(e), § 87(2)(f) provided this information to him (BR 09). PO Conejo said he entered the lobby and told § 87(2)(b) that he was the subject of a search warrant and that he was being detained. PO Conejo could not recall if § 87(2)(b) was frisked, but he denied making any observations that further lead him to believe § 87(2)(b) was in possession of a weapon.

PO Candelaria did not recall if § 87(2)(b) was frisked. At one point, § 87(2)(b) reached for his waistband. PO Candelaria made no additional observations that lead him to believe § 87(2)(b) was in possession of a weapon.

PO Kourounis could not recall how officers learned § 87(2)(b) was in possession of a firearm (BR 10). PO Kourounis said he held onto § 87(2)(b) as he was being apprehended, but could not recall where he made contact with him. He acknowledged that § 87(2)(b) was frisked in the lobby, but he denied frisking § 87(2)(b) himself, and could not recall which officer took this action. PO Kourounis denied making any observations that further lead him to believe § 87(2)(b) was in possession of a firearm.

PO Marin, Sgt. Bohr, and Captain Melendez were not present for this portion of the incident.

§ 87(2)(b), § 87(2)(g), § 87(2)(e), § 87(2)(f)
§ 87(2)(b)
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§ 87(2)(b)
§ 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Sandy Espinal searched § 87(2)(b)

The surveillance footage does not clearly depict any officer searching § 87(2)(b) and due to a technical malfunction, the footage does not capture this portion of the incident in its entirety.

The cell phone video depicts PO Conejo reaching into § 87(2)(b)'s right pocket and § 87(2)(b) asking, "What the fuck are you doing?" It is unclear who § 87(2)(b) is speaking to. PO Conejo reaches around the left and right sides of § 87(2)(b)'s waist, and enters at least one of § 87(2)(b)'s pockets. PO Conejo then steps back from § 87(2)(b) and exits the lobby.

§ 87(2)(b) said multiple officers searched him at the same time he was being frisked. § 87(2)(b)'s front and back shorts pockets and the elastic lining in his socks were allegedly searched. PO Conejo removed § 87(2)(b)'s keys from his shorts pocket. PO Conejo did not ask for permission to search § 87(2)(b)'s shorts, did not explain that officers were executing a search warrant, and did not tell § 87(2)(b) that he intended to use the keys to gain entry to § 87(2)(b)'s apartment. (Allegation C is pled to Sgt. Espinal, the sole supervisor on scene.)

§ 87(2)(b), § 87(2)(i)
§ 87(2)(b) However, when the officers encountered § 87(2)(b) Sgt. Espinal decided to execute the search warrant immediately to prevent the removal of any contraband from the apartment. No officer interviewed recalled whether § 87(2)(b) was searched in the lobby aside from PO Conejo and Sgt. Espinal. PO Conejo said he asked § 87(2)(b) where his keys were, § 87(2)(b) said they were in his pocket and PO Conejo removed § 87(2)(b)'s keys from his shorts pocket and left the lobby to execute the search warrant. Sgt. Espinal acknowledged that PO Conejo reached inside one of § 87(2)(b)'s shorts pockets to retrieve § 87(2)(b)'s keys and said he did this to avoid damaging § 87(2)(b)'s apartment door during the search warrant execution. Sgt. Espinal also said that § 87(2)(b) was not considered to be under arrest at this time.

Absent probable cause, an officer must have a reasonable belief that an individual possesses a weapon in order to search them, even if the individual happens to be on the premises where an authorized narcotics search is taking place. In the Matter of James L., 133 A.D.2d 460 (App. Div. 1987) (BR 12).

Consent to search is voluntary only when it is "a true act of the will," and a clear product of a choice unconstrained by actual or implicit coercion. People v. Gonzalez, 39 N.Y.2d 122 (1976) (BR 13).

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
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§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(2)(e), § 87(2)(f)

Allegation (D) Discourtesy: An officer spoke discourteously to § 87(2)(b)

The surveillance footage does not have audio, and does not capture the alleged discourtesy. The cell phone video does not capture any officer making the alleged discourteous statement, though several people are speaking at once throughout the video.

§ 87(2)(b) said that as he was being frisked and searched, he asked the officers what was going on and an unidentified officer told him to “shut the fuck up.” § 87(2)(b) was facing the wall and could not see which officer made the alleged statement.

PO Candelaria, Sgt. Espinal, PO Kourounis, and PO Conejo each denied telling § 87(2)(b) to “shut the fuck up,” and they each denied hearing any officer make the alleged statement.

§ 87(2)(b), § 87(2)(g)

Allegation (E) Force: Sergeant Sandy Espinal hit § 87(2)(b) against a wall.

The cell phone video shows § 87(2)(b) cursing at the officers as PO Kourounis and Sgt. Espinal hold him. Due to the angle of the camera and position of the officers, it is unclear where each officer is making contact with § 87(2)(b). At 00:18, § 87(2)(b) pulls away from the wall and says, “Lock me up! I’m suing y’all,” while looking back towards Sgt. Espinal, who jerks § 87(2)(b)’s upper arm forward, causing the front of § 87(2)(b)’s body to hit against the lobby wall.

§ 87(2)(b) said that as he resisted while PO Candelaria attempted to apprehend him, PO Kourounis pushed his shoulder into § 87(2)(b)’s back, causing § 87(2)(b)’s body to slam against the wall. § 87(2)(b) did not sustain injuries from the push. § 87(2)(b) only alleged

being slammed against a wall once during the incident and the cell phone video footage identifies the subject officer of the push as Sgt. Espinal. Therefore, Allegation E is pled to Sgt. Espinal, not PO Kourounis.)

Sgt. Espinal acknowledged using force that caused § 87(2)(b) to hit the wall. He said § 87(2)(b) repeatedly pushed away from the wall, moved his body away from the officers, and turned to face the officers to yell at them. Sgt. Espinal used force to gain control over § 87(2)(b) who Sgt. Espinal believed might attempt to flee. Sgt. Espinal also believed § 87(2)(b) was a threat to the officers' safety because he refused to comply with the officers' orders to stop moving his body and to face the wall.

PO Kourounis said that after § 87(2)(b) was handcuffed, § 87(2)(b) pushed his body backwards against Sgt. Espinal. Sgt. Espinal shoved § 87(2)(b) with his forearm to stop § 87(2)(b) from backing into him. PO Kourounis denied that § 87(2)(b)'s body hit the wall.

NYPD Patrol Guide, Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (BR 14). In all circumstances, any application or use of force must be reasonable under the circumstances.

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Nicholas Kourounis strip-searched § 87(2)(b)

Though the surveillance footage and cell phone video show PO Kourounis making physical contact with § 87(2)(b) no footage clearly depicts PO Kourounis searching § 87(2)(b)


§ 87(2)(b) said that after he was handcuffed, PO Kourounis searched inside the shorts § 87(2)(b) was wearing beneath his underwear. This action caused PO Kourounis to make skin-to-skin contact with § 87(2)(b)'s testicles. The search lasted for approximately one minute. § 87(2)(b) was then escorted out of his apartment building and into a police vehicle.

PO Kourounis denied searching § 87(2)(b) during the incident, but acknowledged escorting him into a police vehicle parked outside of the apartment building.

No officer interviewed acknowledged seeing PO Kourounis search § 87(2)(b) under the outer layer of his clothing.

§ 87(2)(b)'s command log entry does not document that § 87(2)(b) was strip-searched (BR 15), and § 87(2)(b)'s arrest report specifically notes that he was not strip-searched (BR 16).

§ 87(2)(b), § 87(2)(g)



Allegation (G) Abuse of Authority: Police Officer Francis Conejo entered

§ 87(2)(b) § 87(2)(b) **in the Bronx.**

Allegation (H) Abuse of Authority: Police Officer Francis Conejo searched

§ 87(2)(b) § 87(2)(b) **in the Bronx.**

Search warrant § 87(2)(b) issued by Supreme Court § 87(2)(b) on § 87(2)(b) authorized a no-knock entry of § 87(2)(b) in the Bronx, without prior notice, at any time, for officers to enter and search the apartment for firearms, narcotics, controlled substances, and other evidence demonstrating that the premises was utilized for the unlawful possession, packing, and sale of narcotics and controlled substances, and to connect persons found therein to the premises by personal papers and effects (BR 17).

Article 690.50 of the Criminal Procedure Law permits officers who have obtained a valid judge-issued search warrant to enter and search the location (BR 18).

§ 87(2)(b), § 87(2)(g)

Allegation (I) Abuse of Authority: Sergeant Franklin Bohr threatened § 87(2)(b) with the arrest of § 87(2)(b)

§ 87(2)(b) said that he was brought to his apartment by two officers, identified by the investigation as PO Marin and PO Kourounis, and that the search warrant was already being executed. § 87(2)(b) sat in the living room, and no other civilians were present. An officer, identified via investigation as Sgt. Bohr, approached § 87(2)(b) and asked where the gun and drugs were located. § 87(2)(b) told Sgt. Bohr he did not know what Sgt. Bohr was talking about. Sgt. Bohr told § 87(2)(b) that if he did not answer his questions, he would arrest his mother, § 87(2)(b).

Sgt. Bohr did not recall many details regarding the incident (BR 19). He believed he questioned § 87(2)(b) at some point, but did not recall what questions he asked. Sgt. Bohr could not recall whether he threatened to arrest § 87(2)(b)'s mother and no officer interviewed acknowledged hearing him do so.

§ 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Francis Conejo strip-searched § 87(2)(b)

§ 87(2)(b) stated that PO Conejo searched him underneath his shorts and underneath his underwear for approximately five minutes in the living room of his apartment. During the search, PO Conejo made skin-to-skin contact with § 87(2)(b)'s testicles, and swiped keys along § 87(2)(b)'s intergluteal cleft, over his underwear, twice while asking him, "Where's the crack?"

PO Conejo stated that § 87(2)(b) was searched inside of the apartment incident to lawful arrest after contraband was discovered. PO Conejo did not recall if he was the officer who searched § 87(2)(b) but said he was present for the search. PO Conejo did not recall if § 87(2)(b) was searched underneath the outer layer of his clothing, but he denied swiping keys along § 87(2)(b)'s intergluteal cleft, denied making skin to skin contact with § 87(2)(b)'s testicles, and denied searching § 87(2)(b)'s groin area.

No officer interviewed acknowledged seeing PO Conejo search § 87(2)(b) underneath the outer layer of his clothing.

§ 87(2)(b)'s command log entry does not document that § 87(2)(b) was strip-searched and § 87(2)(b)'s arrest report specifically notes that he was not strip-searched.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
- PO Candelaria has been a member of service for six years and this is the first CCRB complaint to which he has been a subject.
- Sgt. Espinal has been a member of service for nine years, and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Conejo has been a member of service for six years, and has been a subject in five CCRB complaints and eight allegations, one of which was substantiated:
 - 201408446 involved a substantiated allegation of property damage. The Board recommended Charges, and PO Conejo was found not guilty at trial.
 - § 87(2)(g)
- PO Kourounis has been a member of service for six years, and has been a subject in seven CCRB complaints and 12 allegations, one of which was substantiated:
 - 201806187 involved a substantiated allegation of discourteous language. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- Sgt. Bohr has been a member of service for 32 years, and has been a subject in 17 CCRB complaints and 35 allegations, five of which were substantiated:
 - 9600841 involved a substantiated allegation of a search of a person. The Board did not specify a recommendation for discipline.
 - 200100716 involved substantiated allegations of physical force, a stop, a threat of force, and discourteous language. The Board recommended Charges and Sgt. Bohr plead guilty at trial and lost 20 vacation days.

- Sgt. Bohr's CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to OCA, between October 26, 2015 and August 17, 2018, § 87(2)(b) was convicted of unlawful possession of marijuana (once), disorderly conduct (twice), and criminal possession of a controlled substance in the fifth degree (once), § 87(2)(b)
§ 87(2)(b)
- § 87(2)(b) did not provide the investigation with her date of birth, and considering the number of arrests for individuals named § 87(2)(b) the investigation was unable to obtain § 87(2)(b)'s criminal history.
- On July 22, 2019, a Notice of Claim inquiry was submitted to the New York City Office of the Comptroller. Its results will be added to the casefile upon receipt (BR 22).

Squad No.: 13

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date